

July 26, 1999

**PORTLAND DISTRICT
PROPOSED REGIONAL CONDITIONS
for NATIONWIDE PERMITS PROPOSED IN THE
July 21, 1999 Federal Register**

I. REGIONAL CONDITIONS FOR NEW AND MODIFIED NATIONWIDE PERMITS

3. Maintenance. One additional regional condition is proposed. (The condition below is proposed to be retained.)

Regional Condition. Deviation from the original permitted activity (i.e., increase in the footprint or size, change in location, addition of structures, or change in use) shall require that the applicant notify the District Engineer with a joint Corps/DSL permit application. Copies shall be sent to the DSL, the applicable local government agency, and the DLCD for Coastal Zone projects, unless the project is on tribal land.

PROPOSED NEW REGIONAL CONDITION: Repair of damaged bank protection, described in paragraph 3.(iii) of the NWP, will require a Pre-Construction Notification (PCN) when the proposed project exceeds 250 linear feet.

7. Outfall Structures and Maintenance. No regional conditions are proposed.

One Corps regional condition is currently in effect that requires an individual coastal zone consistency concurrence be obtained for projects located in estuarine or ocean waters. This condition will be removed as a Corps regional condition, and identified as a condition of coastal zone certification concurrence.

12. Utility Activities. No additional regional conditions are proposed. Six regional conditions are currently in effect. Conditions 1 through 4 will be retained. Condition 5 & 6 are proposed to be removed because they duplicate the general regional condition requiring trench plug and soil replacement.

- ❶ Installation of new sewer lines or new sewer line extensions outside an urban growth boundary or unincorporated community boundary shall not be initiated prior to an applicant's receipt of final approval for such work from the applicable local government.
- ❷ Fish habitat and passage shall be protected by ensuring that the work does not create an impediment to fish passage, and that there is no change to stream gradients.
- ❸ Heavy equipment shall not be operated in the active flowing stream, unless specifically authorized. Work may be authorized if necessary in the interest of safety or due to site conditions that prohibit work from the bank. Heavy equipment in wetlands must be placed on mats or other measures must be taken to minimize damage to wetland resources. On tribal lands, coordination of exceptions will be directly with EPA
- ❹ Wetlands adjacent to the site shall be clearly flagged, or otherwise appropriately identified, to prevent damage or loss of that resource.

ODEQ's 401 certification is currently approved for this NWP and DLCD has given CZMA concurrence for this NWP, except that projects in an estuary require an individual concurrence. Also refer to our May 30, 1997 public notice.

14. Transportation Crossings. No additional regional conditions are proposed. Two regional conditions are currently in effect. Condition 1 will be retained. Condition 2 is proposed to be removed because it duplicates the Nationwide Permit General Condition 4 which requires that discharges not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water. Proposed condition to be retained:

- ❶ Road crossings and/or bridges shall have structures/features that direct drainage into biofiltration swales in order to prevent erosion of soil into the waterway and to minimize the pollutants entering streams and wetlands.

ODEQ's 401 certification is currently approved for this NWP and DLCD has given CZMA concurrence for this NWP, contingent upon regional conditions. Also refer to our May 30, 1997 public notice.

27. Stream & Wetland Restoration Activities. No additional regional conditions are proposed. One regional condition is currently in effect. A modification to that condition is proposed as shown below. The modification eliminates a requirement for a project authorized under this NWP to comply with conditions developed under a separate general permit, which is the Corps Portland District Regional Permit for Wetlands Restoration. Both the Regional Permit and this NWP are Corps of Engineers permits. The Regional Permit was developed to address a different category of restoration projects than would be covered under the NWP for Stream & Wetland Restoration Activities. The portion of the existing regional condition pertaining to application of the conditions of the Oregon DSL's General Authorization for Wetland Restoration and Enhancement Projects will be retained to ensure consistency between the Corps and the DSL authorization.

PROPOSED MODIFICATION TO THE EXISTING REGIONAL CONDITION: The restoration project must be consistent with DSL's General Authorization for Wetland Restoration and Enhancement Projects within the State of Oregon.

ODEQ's 401 certification is currently approved for this NWP and DLCD has given CZMA concurrence for this NWP, contingent upon regional conditions. Also refer to our May 30, 1997 public notice.

39. Residential, Commercial, and Institutional Developments. The existing regional conditions for NWP 26, described in our May 30, 1997 public notice, have been consolidated and are proposed to be replaced by the following conditions. Changes were made to eliminate duplication with existing or proposed regional conditions or National NWP conditions.

PROPOSED REGIONAL CONDITIONS:

1. The upper limit of impact for a project using this permit, either as the sole authorizing instrument or in combination with other NWPs, is 2 acres.
2. A PCN to the Corps is required when a golf course is a part of, or is associated with, the proposed development.
3. Streams, wetlands, and their associated buffers that are designated for protection and/or restoration in the permit area must be legally protected by deed restriction, covenant or comparable legal agreement.

State/EPA 401 Certification. Currently is partially denied. An individual 401 Certification is required for projects affecting more than 1/3 acre as shown in our May 30, 1997 public notice.

CZM Consistency Determination. Currently partial concurrence is granted when the conditions described in the May 30, 1997 public notice are met. An individual coastal zone certification concurrence must be obtained from the DLCD for projects anywhere in the coastal zone when the wetland impact exceeds 1/3 acre.

40. Agricultural Activities. No regional conditions are proposed.

41. Reshaping Existing Drainage Ditches.

PROPOSED REGIONAL CONDITION: Drainage ditches that are determined by the Corps to be abandoned do not qualify for this permit.

42. Recreational Facilities.

PROPOSED REGIONAL CONDITION: A Pre-Construction Notification is required for new or expanded golf courses and ski areas.

42. Stormwater Management Facilities.

PROPOSED REGIONAL CONDITIONS:

1. This permit cannot be used in combination with other NWPs in a manner that would allow the total project-related aquatic resource to exceed the minimal impact limitations specified in any other NWP.
2. A PCN to the Corps is required when the project impacts would be greater than 1/4 acre of wetland loss or 250 feet of intermittent stream.

44. Mining Activities. No regional conditions are proposed.

II. PROPOSED CHANGES TO EXISTING REGIONAL CONDITIONS FOR OTHER EXISTING NWP's THAT ARE NOT PROPOSED TO BE MODIFIED

GENERAL NOTE: The USACE Portland District Public Notice, dated 30 May 1997, is the reference for existing regional conditions applied to the NWP's in Oregon that have not been proposed for modification. If Regional Conditions in that public notice are not mentioned below as candidates for modification or relocation, then they will be retained as Corps Regional Conditions.

4. Fish & Wildlife Harvesting, Enhancement, and Attraction Devices & Activities. Three regional conditions are currently in effect. Conditions 1 and 3 will be retained as Corps regional conditions. Condition 2 states that any dredging or filling in a Natural Management Unit of an estuary requires an individual coastal zone certification concurrence. This condition will be removed as a Corps regional condition, and relocated as a condition of coastal zone certification concurrence. Conditions 2 will be replaced with the proposed Corps regional condition requirement below.

PROPOSED REGIONAL CONDITION: A Pre-Construction Notification is required for all work under this NWP, and will identify potential impacts of the proposed harvest/cultivation operation on submerged beds of aquatic vegetation and include a delineation of affected beds.

10. Mooring Buoys. One regional condition is currently in effect. The condition requires that buoys to moor boats for longer than 24 hours in Natural Management Units of estuaries require an individual coastal zone certification concurrence. This condition will become condition of coastal zone concurrence, as stated below.

CZM Regional condition. Buoys to moor boats for longer than 24 hours in Natural Management Units of estuaries require an individual coastal zone certification.

11. Temporary Recreational Structures. One Corps regional condition that is currently in effect relates to modification of the estuary for such structures. This is proposed as a condition of CZM concurrence as follows.

CZM Regional condition. Temporary recreation structures, which cause a modification of an estuarine area or resource, must obtain an individual coastal zone certification concurrence.

13. Bank Stabilization. There are eight current regional conditions. Seven are proposed as regional conditions. Condition 3, relating to use of retaining walls, bulkheads, gabions or similar vertical structures, will be removed as a Corps regional condition and identified as a CZM and 401 condition. The wording of condition 6 has been modified for clarification as shown in bold below.

Regional Conditions.

- ❶ There shall be no change to stream gradients.
- ❷ Where practicable, fish habitat enhancement measures will be incorporated into the design, such as willow sprigs in rock applications, fish resting areas, and vegetative stabilization.

- ③ Riprap material shall be clean, durable, or angular rock which is predominantly coarse or heavy duty material. Filter fabric is to be placed under the riprap where the surface on which it is placed would otherwise leach or erode into the water. Broken concrete is not permitted.
- ④ The use of other materials for bank stabilization, such as tires, wire, and steel posts, are not authorized.
- ⑤ Heavy equipment shall not be operated in the active flowing stream, unless specifically authorized. Work **in the water** may be authorized if necessary in the interest of safety or due to site conditions that prohibit work from the bank. Heavy equipment in wetlands must be placed on mats or other measures must be taken to minimize damage to wetland resources. On tribal lands coordination of exceptions will be **conducted** directly with EPA.
- ⑥ Compatible land use management practices and non-structural techniques of bank stabilization shall be preferred.
- ⑦ A joint Corps/DSL permit application is required when projects exceed 250 ft. in length.

18. Minor Discharges. There is one regional condition is currently in effect. The condition requires that an individual coastal zone certification concurrence must be obtained for projects that are located in an estuary. This condition will be removed as a Corps regional condition, and identified as a condition of coastal zone certification concurrence.

19. Minor Dredging. There are two regional conditions are currently in effect. Conditions 2 will be retained as a Corps regional condition, with the slight modification of eliminating the unnecessary word “of” after the word “disposed. Condition 1 states that dredging located in an estuary must be necessary to maintain an existing project or other wise be consistent with the requirement of the local estuary management plan. This condition will be removed as a Corps regional condition, and identified as a condition of coastal zone certification concurrence.

31. Maintenance of Existing Flood Control Facilities. There are two regional conditions are currently in effect. We propose to eliminate condition 1 that requires all dredged materials to be disposed at an upland site. This condition duplicates the a portion of the restriction already in the national NWP permit and is overly restrictive in that it does not recognize a previously authorized disposal site could be used as long as the terms and conditions for using that site can be met.

III. GENERAL REGIONAL CONDITIONS FOR OREGON (APPLICABLE TO ALL ACTIVITIES AUTHORIZED BY NWP)

The General Regional Conditions 1 through 16 listed below are proposed Corps Conditions and numbers 17-24 are proposed 401/CZM conditions. The original set of conditions were previously announced as final regional conditions in our May 30, 1997 public notice.

1. **LOCAL COMPREHENSIVE PLANS.** Authorization for projects in Oregon under any nationwide permit is valid only if the proposed project is consistent with, or not subject to, the applicable local comprehensive plan and implementing ordinances. Permits or other authorizations must be obtained, when required, from the applicable local government before work is initiated under any nationwide permit.

2. **STATE REMOVAL-FILL LAW.** Authorization for projects in Oregon under any nationwide permit is valid only if it is authorized under, or not subject to, the statutes implementing the Removal-Fill Law. When required, permits must be obtained under this law from the ODSL before the work is initiated under any nationwide permit.

3. **MITIGATION SITES.** Any activity or work authorized under these NWP's shall not adversely impact previously required federal or state mitigation or restoration efforts.

4. **MITIGATION, RIPARIAN VEGETATION PROTECTION & RESTORATION.**

Riparian, wetland, and shoreline vegetation in the permit area shall be protected from disturbance to maximum extent possible, and will be restored or enhanced when it is unavoidably disturbed due to activities associated with the authorized work. The highest priority is to replace damaged or destroyed vegetation with native plants that will form a wetland or wooded riparian community typical of relatively undisturbed streams and wetlands in the area.

- **OREGON STANDARDS:** Mitigation, when required and practical, shall replace aquatic resource functions and values lost when wetlands are filled or streams are altered. Oregon's Guidelines for Freshwater Wetland Compensatory Mitigation will generally be the mitigation standard for freshwater wetland losses. State Guidelines cannot be used to reduce the scope and intent of Federal mitigation policy and tools, as described in National NWP General Condition C.(g).
- **MONITORING:** The standard for mitigation success is 80 percent cover with native plant species after 5 years. Pre and post-mitigation construction color photographic documentation is required. The post-mitigation photographs will be taken immediately after construction, and then annually for five years to document site characteristics, vegetation changes, and associated water and landscape features.
- **PROTECTION:** The planted areas will be temporarily fenced, or otherwise protected from damage, until the vegetation is established. Protection requires control and removal of plants that jeopardize revegetation efforts such as blackberry, scotchbroom, ivy, reedcanary grass, gorse, purple loosestrife, and other non-native and invasive plants.

5. **SPECIAL AREAS OF CONCERN (SAC).** In order to insure that only minimal impacts will occur in the Special Areas of Concern (SAC) listed below, a PCN is required for all work planned in a stream or wetland. Notification to this office will be accompanied by wetland delineation and/or information describing the extent of waters to be impacted.

- Designated Water Quality Limited streams for temperature and sediments;
- Areas that are listed as Outstanding Waters of the State under the State's rules;
- Designated "Essential Salmonid Habitat" ;
- Existing wetland and/or aquatic resource mitigation sites designated by approved permits;
- Areas that are designated Significant Natural Resources in local plans developed to comply with Oregon's Land Use Policies for Goal 5 (Open Space/Natural Resource Lands), Goal 16 (Willamette Greenway) or 17 (Coastal Shorelands);
- Areas known to have important archeological or historic resources;
- Portions of the Willamette River designated as a National Heritage River;
- Portions of the Agate Desert Vernal Pool Habitat near Medford, OR, with a habitat quality designated as Pristine, Altered, or Restorable (see Agate Desert Vernal Pool Habitat: Preliminary Mapping and Assessment, July 31, 1997, prepared for the Oregon Division of State Lands (ODSL) by The Oregon Natural Heritage Program);

- Forested wetlands;
- 100 year floodplains, unless drainage is less than 1 square mile, (Refer to July 21 1999 Federal Register, General condition 27).

6. **VEGETATION BUFFERS:** An activity that has an impact upon a Significant Area of Concern (see General Regional Condition 5) will generally require a vegetated upland and or riparian buffer. The Corps will determine the required width and location of the buffer based upon local standards and/or our consultation with State or Federal resource agencies and their technical criteria.

7. **IN-WATER WORK PERIODS.** All in-water work, including temporary fills or structures, shall occur within the ODFW recommended period for in-water work (as specified in the most current version of Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources). Exceptions to these recommended time periods require specific approval from the Corps permit project manager who will consult with ODFW. On tribal lands the Corps will coordinate exceptions to the timing guidelines with the EPA.

8. **FISH PASSAGE.** Nationwide permit activity affecting “waters of the U.S.” must not restrict the passage of aquatic life. Activities that require the placement of culverts, diversion structures, or changes to the channel morphology must be designed to be consistent with passage standards developed by ODFW and NMFS entitled, ODFW Standards and Criteria for Stream Road Crossings.

9. **ACCESS ROADS & STAGING AREAS.** Construction access roads and associated staging areas shall be protected with a gravel blanket or other suitable material to protect against erosion of sediments into waterways and wetlands.

10. **BIOENGINEERING TECHNIQUES.** Appropriate, bioengineering techniques shall be the preferred method for preventing erosion. ODSL has described many such techniques in Guidelines On Riparian Restoration: Bioengineering which is included in their 1996 Erosion Control General Authorization. Its application includes, but is not limited to, maintaining/improving fish habitat, wildlife corridors, and riparian vegetation buffers.

11. **FEDERAL THREATENED & ENDANGERED SPECIES.** If at any time during the conduct of work authorized, the permittee becomes aware that a Federally listed threatened or endangered species or species proposed for such designation (as identified under the Federal Endangered Species Act) or the habitat of such species may be affected, the permittee must immediately cease activities, notify the Corps, and not reinstate activities until approved by the Corps.

12. **NOTIFICATION FOR ESSENTIAL INDIGENOUS SALMONID HABITAT.** A PCN is required (for coordination with Federal and State fishery agencies by the Corps) prior to performing work in identified Essential Indigenous Salmonid Habitat.

13. **FISH SCREENING.** Where applicable, fish screening will meet the current standards developed by the National Marine Fisheries Service or the Oregon Department of Fish & Wildlife, whichever is more stringent.

14. **STATE THREATENED, ENDANGERED, & SENSITIVE SPECIES.** No activity is authorized under any NWP that is likely to have adverse impacts to species listed by the State of Oregon as threatened, endangered, or sensitive species unless approved by the appropriate State agency.

15. **CULTURAL RESOURCES & HUMAN BURIALS.** If at any time during the conduct of work authorized, the permittee becomes aware that human burials, cultural resources, or historic properties (as identified by the Federal historic preservation laws) may be affected, the permittee must immediately cease activities, notify the Corps, and not reinstate activities until approved by the Corps.

16. **INSPECTION OF PERMIT AREA.** In order to ensure that the nationwide permit terms and conditions are met, the permittee must allow representatives of the Corps to inspect the authorized activity. Personnel from ODEQ, DLCD (for Coastal Zone projects), ODFW, and EPA, are considered to be “representatives”. For tribal land projects, EPA is considered an authorized representative. A request for access to the site will normally be made sufficiently in advance to allow a property owner or representative to be on site with the agency representative making the inspection.

The following are Oregon’s Proposed Water Quality Conditions (401) and Coastal Zone Management (CZM) Conditions (as indicated with each condition)

17. **TERRITORIAL SEAS.** A project proposed to occur partially or completely within Oregon’s territorial sea (0-3 nautical miles offshore) requires an individual coastal zone certification from DLCD. (401/CZM)

18. **NOTIFICATION FOR WATER QUALITY LIMITED STREAMS.** Notification to ODEQ (or EPA on tribal or exclusive Federal jurisdiction lands) is required prior to performing work in WQL waters when the wetland impacts is greater than 0.1 acre or the work involves a regulated stream alteration. Both ODEQ and ODFW will be notified whenever the activity will occur in Essential Indigenous Salmonid Habitat. (401/CZM)

19. **TURBIDITY PREVENTION & LIMITATIONS.** The authorized work shall not cause the turbidity of the affected stream or river to exceed 10% above natural turbidity 100 feet downstream of the discharge point. Turbidity shall be frequently monitored during in-water work. Monitoring points shall be 100 feet upstream (representative background), 100 feet downstream, and at the discharge point. A turbidimeter is recommended, however, visual gaging of turbidity is acceptable. Visible turbidity at 100 feet below the discharge would be considered to exceed the standard. The turbidity standard can be exceeded for a maximum of two hours in a 24-hour period provided all practicable erosion control measures have been implemented including:

1) **Placing** fill in the water that avoids disturbance to the maximum practicable extent (e.g., placing fill with a backhoe rather than end dumping from a truck);

2) **Preventing** construction fill and related debris from entering the waterway or its adjacent wetlands by hydroseeding of temporary or permanent disturbances. Additional measures may also be necessary such as filter bags, organic or fabric soil detention systems, leave strips, berms or other measures sufficient to prevent the movement of soil and sediment;

3) **Using** fabric or plastic covers for soil/dredged material stockpiles that are left idle during rainy seasons;

4) **Conducting** periodic **inspections and** maintenance of erosion control measures, as necessary, to ensure their continued effectiveness.

5) **Flagging and/or fencing wetlands and other riparian vegetation intended for protection to reduce sedimentation and mechanical damage.** (401/CZM)

20. FUELING MACHINERY. Machinery refueling is to occur off site or in a confined, designated area to prevent spillage into waterways and wetlands. (401/CZM)

21. HAZARDOUS, TOXIC, & WASTE MATERIALS. Petroleum products, chemicals, fresh cement, construction, or deleterious waste materials shall not be allowed to enter waterways or wetlands. attention shall be given to preventing sandblasted material and chipped paint from entering these waters. (401/CZM)

22. SEDIMENT SAMPLING REQUIREMENTS. Sediment sampling, provided existing data is not available, shall be conducted for work in WQL waters having limits on toxic substances (metals or organic chemicals), which have an affinity for sediments, and in WQL waters in the vicinity of a known spill. The sampling will be to test for the listed metals or organics for the designated WQL stream segment where the work is to be done. (401/CZM)

23. UPLAND DISPOSAL. Dredged or excavated material shall be placed upland and prevented from eroding back into waterways and wetlands (except discharges authorized under NWP #16 for return waters from upland contained disposal sites). Seeding with grass may be required when materials are placed permanently or will not be subject to being moved or reshaped for long periods of time. Materials shall not be placed on unstable slopes, and stockpiles shall not exceed 25 feet in height.

24. SEDIMENT SAMPLING REPORTING. When work is performed in a listed 303(d) WQL stream or **in designated “Essential Indigenous Salmonid Habitat”**, sediment sampling and turbidity monitoring results shall be mailed to the Department of Environmental Quality, Executive Building, 811 SW. 6th Av., Portland, OR 97204, ATTN: Water Quality Division Certification Evaluator. The report must reference the Corps of engineers permit number (Action ID). **In event of a violation of standards the data must be FAXED to (503) 229-6037.**